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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------|
| 10/049,876  | 06/07/2002  | William F. Aftora    | WFA-1400                   | 6290             |
| 23575   | 7590        | 09/29/2005           |                            |                  |
| JOSEPH G CURATOLO, ESQ.<br>CURATOLO SIDOTI CO. LPA<br>24500 CENTER RIDGE ROAD, SUITE 280<br>CLEVELAND, OH 44145 |             |                      | EXAMINER<br>BECKER, DREW E |                  |
|   |             |                      | ART UNIT<br>1761           | PAPER NUMBER     |

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/049,876

Applicant(s)

AFTOORA, WILLIAM F.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 33 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. The request filed on August 1, 2005 for an RCE based on parent Application No. 10/049,876 is acceptable and an RCE has been established. An action on the RCE follows.

### ***Election/Restrictions***

2. This application contains claims 33-34 drawn to an invention nonelected with traverse in the reply of July 27, 2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application does not appear to disclose a "swelled" starch. Applicant appears to be arguing that the starch would inherently "swell"

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if it were boiled. However, there does not appear to be any teaching of this concept in the application.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 16-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 16 recites the limitation "substantially acid neutralized". It is not clear what level of pH would be considered "substantially acid neutralized", a pH of 4?, a pH of 7, a pH of 9?

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/29894.

WO 96/29894 teaches a food product comprising 5-80% of an edible fat (page 2, line 15), 1-20% starch (page 2, line 18), up to 40% water, taste, and flavor compounds (page 2, line 20), 0.5-15% milk ingredients (page 2, line 17), 0.25-5% gelatin (page 2,

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line 22), 10-35% water (page 4, line 22), the flavors including salt, spices, wine, bouillon, onions, garlic, cheese, and tomatoes (page 4, line 26 to page 5, line 16), maize starch (page 6, line 25), hydrocolloids such as carrageenan, agar, xanthan, and pectin (page 6, line 34), butter (page 2, line 27), modified starch (page 7, line 24), margarine (page 8, line 34), preservatives such as potassium sorbate (page 9, line 28), and the starch being swelled during boiling (page 10, line 15). Regarding claims 5-6 and 12-13, these claim do not positively indicate that, "seafood flavoring" for instance, is the chosen flavor.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 16-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/29894 as applied above, in view of Gimelli et al (pat. No. 6,596,336).

WO 96/29894 teaches the above mentioned components as well as the addition of carbon dioxide (page 9, lines 1-9). WO 96/29894 does not recite the use of sodium bicarbonate. Gimelli et al teach a seasoning mix comprising sodium bicarbonate which provided beneficial pH buffering and thereby controlled the platability of the sauce (column 3, lines 24-45). It would have been obvious to one of ordinary skill in the art to incorporate the sodium bicarbonate of Gimelli et al into the invention of WO 96/29894

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since both are directed sauce products, since WO 96/29894 already included the addition of carbon dioxide (page 9, lines 1-9) but simply does not explain how it was achieved, since WO 96/29894 already included acidic ingredients such as wine and citric acid (page 4, lines 26-36), since sodium bicarbonate was well known to produce carbon dioxide in foods, and since Gimelli et al teach that sodium bicarbonate was also an effective PH buffer in sauces in order to provide a neutralized pH of 4-7 (column 3, lines 24-45).

### ***Response to Arguments***

12. Applicant's arguments filed August 1, 2005 have been fully considered but they are not persuasive.

Applicant argues that "substantially acid neutralized" is a definite term. However, It is not clear what level of pH would be considered "substantially acid neutralized", a pH of 4?, a pH of 7, a pH of 9?

Applicant argues that WO 96/29894 did not teach a "swelled" starch. However, WO 96/29894 clearly taught the starch inherently swelling during boiling (page 10, line 15).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).


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The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DREW BECKER  
PRIMARY EXAMINER  
9-23-05